Nos. 07-984, 07-990

IN THE

Supreme Court of the United States

COEUR ALASKA, INC.,

Petitioner,

v.

SOUTHEAST ALASKA CONSERVATION COUNCIL, ET AL.,

Respondents.

STATE OF ALASKA,

Petitioner,

v.

SOUTHEAST ALASKA CONSERVATION COUNCIL, ET AL.,

Respondents.

On Petitions For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR RESPONDENT GOLDBELT, INC. IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Respondent Goldbelt, Inc. supports and incorporates the questions presented in the petitions for a writ of certiorari filed by Coeur Alaska, Inc. and the State of Alaska.

PARTIES TO THE PROCEEDING

Respondent Goldbelt, Inc. adopts the statement of the parties to the proceedings in the petitions filed by Coeur Alaska, Inc. and the State of Alaska.

Pursuant to this Court's Rule 29.6, undersigned counsel state that Goldbelt, Inc., intervenor-defendant-appellee below, is an Alaska Native urban corporation created pursuant to Section 14(h)(8) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(8). It is wholly owned by its Tlingit Indian shareholders. It has no parent corporation, and no publicly held corporation owns any of its shares.

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BRIEF IN SUPPORT OF THE PETITIONS

Respondent Goldbelt, Inc. respectfully submits this brief in support of the petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit. Goldbelt adopts the Opinion Below, Jurisdiction, Statutory Provisions Involved, and Statement of the Case sections of the petitions filed by Coeur Alaska, Inc. and the State of Alaska.

Goldbelt is the permittee under United States Army Corps of Engineers Permit POA-1997-245-N, issued pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, to construct a marine terminal for the single purpose of providing mine worker shuttle services to Coeur's Kensington Gold Mine. Respondents Southeast Alaska Conservation Council, Sierra Club and Lynn Canal Conservation challenged Goldbelt's permit in the same proceeding that is the subject of the Petitions filed by Coeur and the State of Alaska. The Ninth Circuit Court of Appeals vacated Goldbelt's permit for the sole reason that its stated purpose supposedly failed as a result of the Court's ruling vacating Coeur's Section 404 permit for disposal of tailings from the Kensington Mine.[1] Alaska Pet. App. 31a–32a.

If this Court grants the Petitions and subsequently grants the relief requested by either Coeur

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[1] Goldbelt's dock permit was not tied to any method of tailings disposal. The Ninth Circuit arbitrarily assumed that Coeur will abandon the project if it cannot use the challenged method of tailings disposal.

or the State of Alaska on the merits, it should also reverse the Ninth Circuit's decision vacating Goldbelt's Section 404 permit.

REASONS FOR GRANTING THE PETITIONS

In addition to the reasons given by Coeur and the State of Alaska, this Court should grant the petitions because the decision of the Ninth Circuit Court of Appeals will deprive Goldbelt and its Tlingit Indian shareholders of the economic benefits intended by Congress when it enacted the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. § 1601 *et seq.*, and thus will deal a devastating blow to economically disadvantaged Tlingit Indians throughout northern southeast Alaska.

The Tlingit have lived in southeast Alaska from time immemorial. Their aboriginal territory included lands in and around Berners Bay, where the Kensington Mine is located. C.A. J.S.E.R. 1084.[2] When Congress enacted the landmark ANCSA in 1971, it granted Goldbelt, on behalf of its more than 3,000 Tlingit shareholders, the right to select 23,040 acres of land in partial compensation for the lands illegally taken from them by non-Native interlopers and the United States Government. *Id.* 1086. Congress intended that these lands would be used for economic development and betterment of Goldbelt's shareholders. *Koniag, Inc. v. Koncor Forest Res.*, 39 F.3d 991, 996–97 (9th Cir. 1984) (Congress expected and intended that Alaska Native Corporations would select their Settlement Act lands for economic development purposes); *City of Angoon v. Marsh*, 749 F.2d

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[2] "C.A. J.S.E.R." refers to the Joint Supplemental Excerpts of Record filed in the court of appeals.

1413, 1488 (9th Cir. 1984) (permitting Native Corporation to log ANCSA lands within Admiralty Island National Monument) ("it is inconceivable that Congress would have extinguished their aboriginal claims and insured their economic well being by forbidding the only real economic use of the lands conveyed").

But when the Secretary of the Interior withdrew lands on Admiralty Island, the Sierra Club and others sued to block Goldbelt's selections. Unlike other Native Corporations, which successfully asserted their right to develop their lands within the National Monument, Goldbelt attempted to accommodate the environmental community by agreeing in 1979 to exchange its Admiralty Island selection rights for other lands thought to be less environmentally sensitive, including lands at Cascade Point on the southern shore of Berners Bay. C.A. J.S.E.R. 1086. These lands are on the Juneau road system and potentially very valuable. The City and Borough of Juneau has designated the lands around Cascade Point as a "new growth area," and Goldbelt has expended considerable time and effort in responsible land use planning for the area. *Id.* 1087. Unfortunately for Goldbelt, however, every single attempt to put these lands to productive use has been challenged and frustrated by the same groups that forced Goldbelt to abandon its selection rights on Admiralty Island. *Id.* As a result of the inequitable actions of the Sierra Club, SEACC, and Lynn Canal Conservation, the intent of Congress has been frustrated, and Goldbelt's lands on Berners Bay have lain unproductive for the past quarter century.

When Coeur announced its intent to reopen the historic Kensington Mine on the north shore of Bern-

ers Bay – which is accessible only by air or water – Goldbelt saw a perfect opportunity to develop its lands at Cascade Point on the south shore of the Bay as a marine terminal to provide mine worker shuttle services to the Mine. Goldbelt's proposal was treated as a component of the overall Kensington Plan of Operations, and was subjected to exhaustive environmental studies – none of which has been challenged by the Sierra Club, SEACC, or Lynn Canal Conservation.

The Army Corps of Engineers concluded that Goldbelt's dock proposal was the least environmentally damaging, practicable alternative for transporting workers to the mine site. C.A. J.S.E.R. 868. When the Corps issued its Section 404 permit for a marine terminal limited to mine shuttle operations, however, the Sierra Club, SEACC, and Lynn Canal Conservation filed suit alleging that Goldbelt's permit was inextricably linked by purpose to Coeur's Section 404 permit for tailings disposal and could not survive a successful companion challenge to Coeur's permit.

It would be difficult to overstate the importance of the Kensington Gold Project to the Tlingit Indians of the Juneau area. The Ninth Circuit's decision to vacate the Coeur and Goldbelt permits has done far more than unfairly dash Goldbelt's most recent attempt to use its ANCSA lands. It has struck a crippling blow to the economic aspirations of a generation of Tlingit Indians living in northern southeast Alaska.

Southeast Alaska generally has been hard hit by the decline of the timber and fishing industries. C.A. J.S.E.R. 1081. In the Juneau area, the economic downturn has been compounded by a contraction of

employment opportunities in the public sector. *See* C.A. Br. of the City and Borough of Juneau, as *Amicus Curiae* in Support of Defendants-Appellees 12. Economists estimate that the lack of decent paying jobs is resulting in a net out-migration of as much as 4500 persons a year from Southeast Alaska, especially in the 25- to 35-year-old range. *See* C.A. *Amicus Curiae* Br. of Southeast Conf. in Support of Defendants-Appellees 6 (the Southeast Conference represents the interests of thirty Southeast Alaska member communities, nine Alaska Native corporations, and numerous other private and public entities in the region).

The economic hard times have crippled the rural, largely Native, areas of Southeast Alaska where employment opportunities are virtually non-existent. *See* C.A. Br. of *Amicus Curiae* Berners Bay Consortium in Support of Appellees 4 (the Consortium is a coalition of Native Corporations and Coeur Alaska, Inc.). Although many of Goldbelt's shareholders reside in the Juneau area, their unemployment rates are two to three times higher than the rates for non-Natives. Much of the employment that is available to them is seasonal, low paying and without benefits. C.A. J.S.E.R. 1078–79.

From the outset, Coeur has recognized that the Kensington Mine lies at the heart of Tlingit traditional territory, and has taken truly extraordinary efforts to insure that Native Alaskans are included in the prosperity that the mine promises. These efforts not only have been exemplary, they are unprecedented. As one Tlingit leader put it:

> No other company . . . has ever worked so conscientiously as Coeur to involve the Natives of Northern Southeast

> Alaska in the planning of its activities, or been so diligent in its efforts to ensure that Alaska Natives are included in the economic benefits to be derived from its operations.

C.A. J.S.E.R. 1080.

Before the Ninth Circuit effectively shut down the Kensington Mine, Coeur had been training Alaska Natives for high-paying, full-time jobs in the mining industry. Roughly 25 percent of the construction workforce at the Kensington Mine was Alaska Native. Coeur had promised partnerships with Native Corporations, including Goldbelt, to provide goods and services – such as the mine shuttle service Goldbelt plans to operate from its Cascade Point terminal. C.A. J.S.E.R. 1079–80.

The optimism generated by Coeur's Native-friendly operations has been dashed by the Ninth Circuit's rulings. This Court should intervene – not only to correct an erroneous reading of the Clean Water Act – but to fulfill the quarter-century-old promise of Congress that the lands it intended for the economic benefit of the Tlingit Indians not be locked up in perpetuity by endless litigation intended to keep those lands in de facto wilderness status.

CONCLUSION

For these reasons and for the reasons set out in the petitions of Coeur Alaska and State of Alaska, the petitions for a writ of certiorari should be granted.

Respectfully submitted.

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